

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 58

[Docket No. FR-3514-P-01]

RIN 2501-AB67

Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the existing environmental regulations governing entities that assume HUD responsibilities by making the environmental review procedures consistent under the various programs to which these regulations apply. This proposed rule would also make clarifying and editorial changes to the existing environmental regulations governing entities that assume HUD responsibilities.

DATES: Comment Due Date: November 24, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Richard H. Broun, Director, Office of Environment and Energy, Room 7240, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410, telephone (202) 708-2894. For telephone communication, contact Fred Regetz, Environmental Review Division at (202) 708-1201. Hearing or speech-impaired individuals may call the Federal Information Relay Service number at 1-800-877-TDDY (1-800-877-8339) and refer to (202) 708-4346.

SUPPLEMENTARY INFORMATION:

I. Background

This proposed rule would revise and restate the procedures for recipients of HUD assistance and other responsible entities in applicable HUD programs to carry out environmental reviews in accordance with the National

Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) ("NEPA"), the NEPA implementing regulations of the Council on Environmental Quality (CEQ), and other NEPA related federal laws. Applicable HUD programs include any program in which specific statutory authority allows the environmental review responsibilities to be assumed by responsible entities. Currently, applicable HUD programs, and therefore those covered by part 58 only include: (1) Title I Community Development Block Grant Programs, (2) the Rental Rehabilitation Program and the Housing Development Grant Program (3) the HOME programs under the Cranston-Gonzalez National Affordable Housing Act (NAHA), (4) the homeless programs authorized by Title IV of the Stewart B. McKinney Homeless Assistance Act, (5) Grants to States and units of general local government for abatement of lead-based paint, (6) Public and Indian Housing and most Section 8 programs under Title I of the United States Housing Act for 1937, (7) Special projects appropriated under an appropriation Act of HUD, and (8) The FHA Multi-Family Housing Finance Agency Pilot Program under section 542(c) of the Housing and Community Development Act of 1992.

A. Historical Perspective

On April 12, 1982, the Department published an interim rule in the Federal Register at 47 FR 15750, revising part 58. It set forth the environmental requirements for the Title I Community Development Block Grant programs of the Department, as authorized by section 104(g) of the Housing and Community Development Act of 1974 (HCD Act of 1974). Under section 104(g), block grant recipients may assume the environmental review responsibilities of the Secretary.

On June 7, 1984, the Department published another interim rule in the Federal Register at 49 FR 23610. It amended part 58 to implement section 17 of the United States Housing Act, as added by section 301 of the Housing and Urban Rural Recovery Act of 1983. Section 17 established two new housing programs—the Rental Rehabilitation Program (24 CFR part 511) and the Housing Development Grant Program (24 CFR part 850) and made these programs subject to section 104(g) of the HCD Act of 1974. In addition, the rule added § 58.17. Section 58.17 implemented section 17(i)(1) of the 1937 Act by establishing conditions under which assistance may be provided when the rehabilitation or development would affect a property on or eligible for

inclusion on the National Register of Historic Places.

On August 10, 1988 (53 FR 30186), the Department amended part 58 by adding paragraph (a)(6) to § 58.35 to categorically exclude maintenance and administrative activities which are undertaken to support housing and shelter programs for the homeless including those authorized by the Stewart B. McKinney Homeless Assistance Act (McKinney Act). The McKinney Act was amended in 1988 by adding section 443 which authorized the use of the environmental review provisions of section 104(g) of the HCD Act of 1974 for HUD's homeless assistance programs.

An interim rule published on June 23, 1993 (58 FR 34130) amended part 58 to expand its applicability to the HOME program and the homeless assistance programs under title IV of the McKinney Act. The 1993 interim rule also broadened, where appropriate, program-specific references to various activities, responsibilities and categorical exclusions so that they apply to activities and participants under these two programs.

The 1993 interim rule also amended part 58 to relocate three statutory and regulatory provisions from the list of laws and authorities in § 58.5 for which recipients must assume environmental responsibilities. The three authorities—the Flood Disaster Protection Act of 1973 (FDPA), the Coastal Barrier Resources Act (CBRA), and the notice to purchasers of property in runway clear zones of a civil airport and clear zones of a military airfield—were relocated from § 58.5 to a new § 58.6. (HUD determined that, intrinsically, these three authorities are not like the other authorities listed in § 58.5 that trigger the environmental certification, public notice and release of funds procedures. FDPA pertains to mandatory purchase of flood insurance protection; CBRA pertains to the direct prohibition against use of any funds in designated coastal barriers; and the notice to purchasers of property in runway clear zones is a disclosure requirement.)

In this change, the Department also amended part 58 further to incorporate categorical exclusions from NEPA review and statements regarding the inapplicability of other environmental laws with respect to certain activities for which comparable provisions were already made in 24 CFR part 50. Part 50 applies to programs under which HUD itself is responsible for performing environmental reviews, and it would be anomalous to require a different standard of review for recipients where similar activities are carried out under

programs covered by part 58. The interim rule also provided an additional categorical exclusion and statement regarding inapplicability of related laws for activities to assist homeownership of existing dwelling units. (This is an important activity under the HOME program.) This provision derived from the current categorical exclusion from NEPA review for individual actions on one- to four-family properties in cases under part 50, and from HUD's determination that related laws and authorities requiring environmental reviews do not apply to such homeownership assistance.

The provision in part 58 regarding limitations on actions pending environmental clearance was also revised to more closely reflect (1) the already applicable statutory prohibition against premature commitment of HUD funds, and (2) the already applicable provision in regulations of the Council on Environmental Quality (CEQ) (40 CFR 1506.1) prohibiting premature undertaking of activities that have adverse environmental impact or limit the choice of reasonable alternatives. Finally, the Department made other clarifying and editorial revisions to part 58 in the interim rule.

On April 21, 1994, HUD published in the Federal Register (59 FR 19100) a final rule that amended 24 CFR part 585(b) to refer to HUD's Floodplain management regulations in 24 CFR part 55.

On August 26, 1994, under the Multifamily Housing Property Disposition Reform Act of 1994 (MHPDRA) the Department published an interim rule in the Federal Register (59 FR 44258) that revised the sections in 24 CFR part 58 which govern the assumption if environmental responsibilities by recipients under the HOME Investment Partnership Program and the Lead-based Paint Hazard Reduction and Abatement Program.

On March 13, 1995 an interim rule was published in the Federal Register (60 FR 13518) which provided that the part 58 procedures for the assumption and carrying out of responsibilities for environmental review, decisionmaking and action apply to public and Indian housing programs, the Section 8 program other than Section 8 assistance under 24 CFR part 866 to projects with HUD-insured or HUD-held mortgages and in connection with the disposition of HUD-owned projects special projects, and the FHA Multifamily Housing Finance Agency Risk Sharing Pilot Program covered by the MHPDRA amendments.

II. Discussion of Public Comments From 1993 Interim Rule

The Department received 6 public comments concerning part 58 in response to the interim rule published on June 23, 1993 (58 FR 34130): 4 comments from local governments and 2 comments from private housing associations. As a result of these comments, the Department proposes to make certain revisions to the June 23, 1993 interim rule which are incorporated into today's proposed rule. The following discussion summarizes the comments and provides HUD's responses to those comments. Every comment was reviewed and considered, although it may not be specifically addressed in this preamble.

Two commenters suggested that the Department exempt recipients from complying with § 58.5 unless the activity actually has a physical impact on the land. One commenter cited down payment and closing cost assistance with HOME funds as an activity with no physical impact on land, and one which should therefore not be subject to § 58.5. The Department agrees with this suggestion, and proposes to add more specific language to § 58.35(b) to restrict the applicability of § 58.5 in the case of activities which do not have any physical impact or result in any physical change to land.

Two commenters recommended that the final rule modify part 58 to allow recipients to enter into option agreements for property acquisition or to commit non-federal money prior to the completion of the environmental assessment. These commenters argued that this restriction prevents recipients from pursuing many viable projects. An option obtained by a recipient is allowable prior to the completion of an environmental review and the approval of the RROF when the recipient can cancel the option if the recipient determines that the property is undesirable as a result of the environmental review required by 24 CFR part 58 and the recipient has alternative sites under consideration or option. There is no constraint on the purchase of options or properties by third parties that have not been selected for HUD funding, have no responsibility for the environmental review and have no say in the approval or disapproval of the project.

Two commenters suggested that the Department exempt rehabilitation projects of one to four units and owner-occupied rental and homeownership projects from the environmental requirements of part 58. This Department has provided some relief in

this area in §§ 58.35(a)(4) and 58.35(b). A new category of activities (actions on one to four family structures) was identified (§ 58.35(a)(7)) in the interim rule published on June 23, 1993 as being Categorically Excluded from the National Environmental Policy Act (NEPA). The proposed rule proposes to change this section to § 58.35(a)(4). Categorically excluded activities must still comply with 24 CFR 58.5 unless, on a case-by-case basis, the recipient determines the proposed action will not alter any conditions that would require compliance with any of the related laws in § 58.5. In such case, no compliance or environmental review procedure is necessary. An activity that has the potential to trigger one or more of the related laws in § 58.5 cannot be exempt.

One commenter suggested that the Department exclude all rehabilitation projects from the thresholds of § 58.35(a)(4)(i), arguing that these thresholds are not statutorily based and not relevant to rehabilitation projects, and constitute an excessive regulatory burden. The Department does not agree. The Department believes that maintaining the thresholds identified in § 58.35(a)(4)(i) is necessary to determine whether NEPA applies.

B. Proposed Rule

This proposed rule would make further changes to part 58 to ensure that the environmental review procedures are consistent for entities assuming HUD environmental responsibilities regardless of the program under which the activity is funded. In addition, it would make clarifying and editorial revisions to part 58.

In Subpart A, terms, abbreviations and definitions would be expanded to include acronyms of recently authorized programs, and would more precisely define terms such as "unit density," "vacant building" and when extraordinary circumstances would warrant a higher level review of an activity that is normally categorically excluded.

Subpart B would be changed to clarify and emphasize the role that the responsible entity and the certifying officer play in the assumption of the responsibilities of the Secretary.

The Department has also proposed to make changes to encourage early program planning as required by the regulations implementing the procedural provisions of NEPA (40 CFR 1501.2). Changes in subpart B would emphasize (a) the need to centralize expertise in preparing reviews, (b) the development of an environmental data base, (c) balancing development and economic needs with environmental

concerns, and (d) the use of a "tiering" concept so that environmental reviews or assessments can consider issues ripe for review at various points in the development process. The main objective of the revisions to this subpart would be to eliminate repetitive discussions of the same issues, to allow a single review to be prepared and adopted by multiple users, and to increase the credibility of the environmental process.

The Department has proposed in subpart D to change the focus of decision-making away from the project-by-project approach to encourage communities to take environmental factors into account prior to program and site selection. This new approach would provide for the identification of areas which may be less suitable for development or which would require additional costs to develop so that these factors can be taken into consideration in making site selection decisions. It also would allow a grantee to determine in advance of the environmental review, those factors that are most relevant to each area and those that are minor or of no concern. This data would be of value to all parties proposing development in the community including private persons, non-profits and Federal, State and local governments.

A second objective of the revision of subpart D would be to identify programs and projects that are exempt by statute, categorically excluded from NEPA, or determined not subject to the related Federal authorities described in § 58.5, except under extraordinary circumstances. The list of activities that are normally considered categorically excluded would also be expanded to reflect the new programs and activities funded by the Department.

In this proposed rule, former subparts C, G and J would be incorporated into subpart A. Former subpart H would appear as subpart F, and former subpart I would appear as subpart G.

Finally, the Department has consulted with the Council on Environmental Quality and the Environmental Protection Agency by providing them with advance copies of this proposed rule. When a final rule is issued, it will take into consideration the comments and recommendations of those agencies along with the other comments submitted.

III. Other Matters

A. Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24

CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969. The FONSI is available for public inspection during regular business hours in the Office of General Counsel, the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

B. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive order 12612, Federalism, has determined that the policies contained in this proposed rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the proposed rule is not subject to review under the order. Specifically, this proposed rule modifies environmental requirements for recipients of HUD assistance and other entities that assume environmental review responsibilities for activities and projects in which specific statutory authority exists to assign the environmental review responsibilities to the recipients or to allow States and local governments to assume those responsibilities on behalf of certain recipients.

C. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order, The Family, has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this proposed rule, as those policies and programs relate to family concerns.

D. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this proposed rule, and in so doing certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would streamline part 58 and carry out the statutory mandate of providing for the assumption of environmental review responsibilities by certain recipients of HUD assistance or other entities in accordance with section 104(g) of the Housing and Community Development Act of 1974 and similar statutory provisions.

List of Subjects in 24 CFR Part 58

Community development block grants, Environmental impact statements, Environmental protection, Grant programs—housing and community development, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 58 is proposed to be revised to read as follows:

PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES

Subpart A—Purpose, Legal Authority, Federal Laws and Authorities

Sec.

- 58.1 Purpose, scope and applicability.
- 58.2 Terms, abbreviations and definitions.
- 58.3 [Reserved].
- 58.4 Assumption authority.
- 58.5 Related Federal laws and authorities.
- 58.6 Other requirements.
- 58.7–58.9 [Reserved].

Subpart B—General Policy: Responsibilities of Responsible Entities

- 58.10 Basic environmental responsibility.
- 58.11 Legal capacity and performance.
- 58.12 Technical and administrative capacity.
- 58.13 Responsibilities of the certifying officer.
- 58.14 Interaction with State, Federal and non-Federal entities.
- 58.15 Tiering.
- 58.16 [Reserved].
- 58.17 Historic Preservation requirements for prior Section 17 grants.
- 58.18 Responsibilities of States Assuming HUD Responsibilities.
- 58.19–58.20 [Reserved].

Subpart C—General Policy: Environmental Review Procedures

- 58.20 Incorporation of NEPA regulations by reference.
- 58.21 Time periods.
- 58.22 Limitations on activities pending clearance.
- 58.23 Financial assistance for environmental review.
- 58.24–58.29 [Reserved].

Subpart D—Environmental Review Process: Documentation, Range of Activities, Project Aggregation and Classification

- 58.30 Environmental Review Process.
- 58.31 [Reserved].
- 58.32 Project aggregation.
- 58.33 Emergencies.
- 58.34 Exempt activities.
- 58.35 Categorical exclusions.
- 58.36 Environmental assessments.
- 58.37 Environmental impact statement determinations.
- 58.38 Environmental review record.
- 58.39 [Reserved].

Subpart E—Environmental Review Process: Environmental Assessments (EA's)

- 58.40 Preparing the environmental assessment.
- 58.41–58.42 [Reserved].
- 58.43 Dissemination and/or publication of the findings of no significant impact.
- 58.44 [Reserved].
- 58.45 Public comment periods.
- 58.46 Time delays for exceptional circumstances.
- 58.47 Re-evaluation of assessment findings.
- 58.48–58.51 [Reserved].

Subpart F—Environmental Review Process: Environmental Impact Statement Determinations

- 58.52 Adoption of other agencies' EISs.
- 58.53 Use of prior environmental impact statements.
- 58.54 [Reserved].

Subpart G—Environmental Review Process: Procedures for Draft, Final and Supplemental Environmental Impact Statements

- 58.55 Notice of intent to prepare an EIS.
- 58.56 Scoping process.
- 58.57 Lead agency designation.
- 58.58 [Reserved].
- 58.59 Public hearings and meetings.
- 58.60 Preparation and filing of environmental impact statements.
- 58.61–58.69 [Reserved].

Subpart H—Release of Funds for Particular Projects

- 58.70 Notice of intent to request release of funds.
- 58.71 Request for release of funds and certification.
- 58.72 HUD or State actions on RROFs and certifications.
- 58.73 Objections to release of funds.
- 58.74 Time for objecting.
- 58.75 Permissible bases for objections.
- 58.76 Procedure for objections.
- 58.77 Effect of approval of certification.
- 58.78–58.79 [Reserved].

Authority: 12 U.S.C. 1707 note; 42 U.S.C. 1437o(i) (1) and (2), 1437x, 3535(d), 3547, 4332, 4852, 5304(g), 11402, and 12838; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p.123.

Subpart A—Purpose, Legal Authority, Federal Laws and Authorities**§ 58.1 Purpose, scope and applicability.**

(a) *Purpose.* This part provides instructions and guidance to recipients of HUD assistance and other responsible entities for conducting an environmental review for a particular project or activity and for obtaining approval of a Request for Release of Funds.

(b) *Applicability.* This part applies to activities and projects where specific statutory authority exists for recipients or other responsible entities to assume environmental responsibilities. Programs and activities subject to this part include:

(1) Community Development Block Grant programs authorized by title I of the Housing and Community Development Act of 1974, in accordance with section 104(g) (42 U.S.C. 5304(g));

(2) The Rental Rehabilitation program and Housing Development Grant program authorized by section 17 of the United States Housing Act of 1937, in accordance with sections 17(i)(1) and 17(i)(2) with respect to projects and programs for which binding commitments have been entered into prior to October 1, 1991, since section 17 was repealed by the Cranston-Gonzalez National Affordable Housing Act enacted November 28, 1990 (42 U.S.C. 1437o(i) (1) and (2)).

(3) The Emergency Shelter Grant Program, Supportive Housing program (and its predecessors, the Supportive Housing Demonstration program (both Transitional Housing and Permanent Housing for Homeless Persons with Disabilities) and Supplemental Assistance for Facilities to Assist the Homeless), Shelter Plus Care program, Safe Havens for Homeless Individuals Demonstration Program, and Rural Homeless Housing Assistance, authorized by title IV of the Stewart B. McKinney Homeless Assistance Act, in accordance with section 443 (42 U.S.C. 11402);

(4) The HOME Investment Partnerships Program authorized by title II of the Cranston-Gonzalez National Affordable Housing Act (NAHA), in accordance with section 288 (42 U.S.C. 12838);

(5) Grants to States and units of general local government for abatement of lead-based paint and lead dust hazards pursuant to title II of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1992, and grants for lead-based paint hazard reduction under section 1011 of the Housing and Community Development Act of 1992, in accordance with section 1011(o) (42 U.S.C. 4852(o));

(6)(i) Public Housing Programs under Title I of the United States Housing Act of 1937, in accordance with section 26 (42 U.S.C. 1437x);

(ii) Indian Housing Programs under Title I of the United States Housing Act of 1937, including the Mutual Help Program, in accordance with section 26 (42 U.S.C. 1437x); and

(iii) Assistance administered by a public housing agency or Indian housing authority under section 8 of the United States Housing Act of 1937, except for assistance provided under 24 CFR part 886, in accordance with section 26 (42 U.S.C. 1437x).

(7) Special Projects appropriated under an appropriation act for HUD, such as special projects under the head "Annual Contributions for Assisted Housing" in Title II of various Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Acts, in accordance with section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994 (42 U.S.C. 3547); and

(8) The FHA Multifamily Housing Finance Agency Pilot Program under section 542(c) of the Housing and Community Development Act of 1992, in accordance with section 542(c)(9)(12 U.S.C. 1707 note).

§ 58.2 Terms, abbreviations and definitions.

(a) For the purposes of this part, the following definitions supplement the uniform terminology provided in 40 CFR part 1508:

(1) *Activity* means an action that a grantee or recipient puts forth as part of an assisted project, regardless of whether its cost is to be borne by the HUD assistance or is an eligible expense under the HUD assistance program.

(2) *Certifying officer* means the official who is authorized to execute the Request for Release of Funds and Certification and has the legal capacity to carry out the responsibilities of § 58.13.

(3) *Extraordinary circumstances* means a situation in which an environmental assessment (EA) or environmental impact statement (EIS) is not normally required, but due to unusual conditions, an EA or EIS is appropriate. Indicators of unusual conditions are:

(i) Actions that are unique or without precedent;

(ii) Actions that are substantially similar to those that normally require an EIS;

(iii) Actions that are likely to alter existing HUD policy or HUD mandates; or

(iv) Actions that, due to unusual physical conditions on the site or in the vicinity, have the potential for a significant impact on the environment or in which the environment could have a significant impact on users of the facility.

(4) *Project* means an activity, or a group of integrally related activities, designed by the recipient to accomplish, in whole or in part, a specific objective.

(5) *Recipient* means any of the following entities, when they are eligible recipients or grantees under a program listed in § 58.1(b):

(i) A State that does not distribute HUD assistance under the program to a unit of general local government;

(ii) Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, and Palau;

(iii) A unit of general local government;

(iv) An Indian tribe.

(v)(A) With respect to Public Housing Programs under § 58.1(b)(6)(i), a public housing agency;

(B) With respect to Indian Housing Programs under § 58.1(b)(6)(ii), an Indian housing authority;

(C) With respect to section 8 assistance under § 58.1(b)(6)(iii), a public housing agency or Indian housing authority;

(vi) Any direct grantee of HUD for a special project under § 58.1(b)(7); and

(vii) With respect to the FHA Multifamily Housing Finance Agency Pilot Program under § 58.1(b)(8), a qualified housing finance agency.

(6) *Release of funds.* In the case of The FHA Multifamily Housing Finance Agency Pilot Program under § 58.1(b)(8), Release of Funds, as used in this part, refers to HUD issuance of a firm approval letter, and Request for Release of Funds refers to a recipient's request for a firm approval letter.

(7) *Responsible entity* means:

(i) With respect to environmental responsibilities under programs listed in § 58.1(b) (1) through (5), a recipient under the program.

(ii) With respect to environmental responsibilities under the programs listed in § 58.1(b) (6) through (8), a State, unit of general local government, Indian tribe or Alaska native village, when it is the recipient under the program. Non-recipient responsible entities are designated as follows:

(A) For qualified housing finance agencies, the State or a unit of general local government, Indian tribe or Alaska native village whose jurisdiction contains the project site;

(B) For public housing agencies, the unit of general local government within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;

(C) For non-profit organizations and other entities, the unit of general local government, Indian tribe or Alaska native village within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;

(D) For Indian housing authorities (outside of Alaska), the Indian tribe in whose jurisdiction the project is located,

or if the project is located outside of a reservation, the Indian tribe that established the authority; and

(E) For Indian housing authorities in Alaska, the Alaska native village in whose community the project is located, or if HUD determines this infeasible, a unit of general local government or the State, as designated by HUD.

(8) *Unit density* refers to a change in the number of dwelling units. Where a threshold is identified as a percentage change in density that triggers review requirements, no distinction is made between an increase or a decrease in density.

(9) *Tiering* means the evaluation of an action or an activity at various points in the development process as a proposal or event becomes ripe for an Environment Assessment or Review.

(10) *Vacant building* means a habitable structure that has been vacant for more than one year.

(b) The following abbreviations are used throughout this part:

CDBG—Community Development Block Grant

CEQ—Council on Environmental Quality

EA—Environmental Assessment

EIS—Environmental Impact Statement

EPA—Environmental Protection Agency

ERR—Environmental Review Record

FONSI—Finding of No Significant Impact

HUD—Department of Housing and Urban Development

NAHA—Cranston-Gonzalez National Affordable Housing Act of 1990

NEPA—National Environmental Policy Act of 1969, as amended

NOI/EIS—Notice of Intent to Prepare an EIS

NOI/RROF—Notice of Intent to Request Release of Funds

ROD—Record of Decision

ROF—Release of Funds

RROF—Request for Release of Funds

§ 58.3 [Reserved].

§ 58.4 Assumption authority.

(a) *Assumption authority for responsible entities: General.*

Responsible entities shall assume the responsibility for environmental review, decision-making, and action that would otherwise apply to HUD under NEPA and other provisions of law that further the purposes of NEPA, as specified in § 58.5. Responsible entities that receive assistance directly from HUD assume these responsibilities by execution of a grant agreement with HUD and/or a legally binding document such as the certification contained on HUD Form 7015.15, certifying to the assumption of environmental responsibilities. When a

State distributes funds to a responsible entity, the State must provide for appropriate procedures by which these responsible entities will evidence their assumption of environmental responsibilities.

(b) *Particular responsibilities of the States.* (1) States are recipients for purposes of directly undertaking a State project and must assume the environmental review responsibilities for the State's activities and those of any non-governmental entity that may participate in the project. In this case, the State must submit the certification and RROF to HUD for approval.

(2) In accordance with § 58.18, State program agencies are authorized to exercise HUD's responsibilities with respect to approval of a unit of local government's environmental certification and RROF for a HUD assisted project funded through the State, except for projects assisted by Section 17 Rental Rehabilitation assistance and Housing Development Grants. Approval by the State of a unit of local government's certification and RROF satisfies the Secretary's responsibilities under NEPA and the related laws cited in § 58.5.

(3) For section 17 Rental Rehabilitation projects and Housing Development Grants, the State program agency shall meet the responsibilities set forth in § 58.18. However, for section 17 projects, the State lacks authority to approve RROFs and therefore must forward to the responsible HUD Field Office the local recipient's certification and RROF, any objections to the release of funds submitted by another party, and the State's recommendation as to whether HUD should approve the certification and the RROF.

§ 58.5 Related Federal laws and authorities.

In accordance with the provisions of law cited in § 58.1(b), the responsible entity must assume responsibilities for environmental review, decision-making and action that would apply to HUD under the following specified laws and authorities. The responsible entity must certify that it has complied with the requirements that would apply to HUD under these laws and authorities and must consider the criteria, standards, policies and regulations of these laws and authorities.

(a) *Historic properties.* (1) The National Historic Preservation Act of 1966 as amended (16 U.S.C. 470 *et seq.*), particularly sections 106 and 110 (16 U.S.C. 470 and 4-70h-2), except as provided in § 58.17 for Section 17 projects.

(2) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921) particularly section 2(c).

(3) Federal historic preservation regulations as follows:

(i) 36 CFR part 800 with respect to HUD programs other than Urban Development Action Grants (UDAG); and

(ii) 36 CFR part 801 with respect to UDAG.

(4) The Reservoir Salvage Act of 1960 (16 U.S.C. 469 *et seq.*); particularly section 3 (16 U.S.C. 469a-1); as amended by the Archeological and Historic Preservation Act of 1974.

(b) *Floodplain management and wetland protection.* (1) Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), as interpreted in HUD regulations at 24 CFR part 55, particularly section 2 (a) of the order (For an explanation of relationship between the decision-making process in 24 CFR part 55 and this part, see § 55.10 of this subtitle.)

(2) Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961) particularly sections 2 and 5.

(c) *Coastal Zone Management.* The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*), as amended particularly section 307 (c) and (d) (16 U.S.C. 1456 (c) and (d)).

(d) *Sole source aquifers.* (1) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) *et seq.*, and 21 U.S.C. 349) as amended; particularly section 1424(e) (42 U.S.C. 300h-3(e)).

(2) Sole Source Aquifers (Environmental Protection Agency)—40 CFR part 149.

(e) *Endangered species.* The Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) as amended particularly section 7 (16 U.S.C. 1536)).

(f) *Wild and scenic rivers.* The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et seq.*) as amended particularly section 7 (b) and (c) (16 U.S.C. 1278 (b) and (c)).

(g) *Air quality.* (1) The Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended; particularly section 176 (c) and (d) (42 U.S.C. 7506 (c) and (d)).

(2) Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency)—40 CFR parts 6, 51, and 93.

(h) *Farmlands protection.* (1) Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 *et seq.*) particularly sections 1540(b) and 1541 (7 U.S.C. 4201(b) and 4202).

(2) Farmland Protection Policy (Department of Agriculture)—(7 CFR part 658).

(i) *HUD environmental standards.*

Applicable criteria and standards specified in HUD environmental regulations (24 CFR part 51) (other than the runway clear zone and clear zone notification requirement in 24 CFR 51.303 (a)(3)) and HUD Notice 79-33, Policy Guidance to Address the Problems Posed by Toxic Chemicals and Radioactive Materials, September 10, 1979).

(j) *Environmental justice.* Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994 (59 FR 7629.)

§ 58.6 Other requirements.

In addition to the duties under the laws and authorities specified in § 58.5 for assumption by the responsible entity under the laws cited in § 58.1(b), the responsible entity must comply with the following requirements. Applicability of the following requirements does not trigger the certification and release of funds procedure under this part or preclude exemption of an activity under § 58.34(a)(11) and/or the applicability of § 58.35(b). However, the responsible entity remains responsible for addressing the following requirements in its ERR and meeting these requirements, where applicable, regardless of whether the activity is exempt under § 58.34 or categorically excluded under § 58.35 (a) or (b).

(a)(1) Under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4128), Federal financial assistance for acquisition and construction purposes (including rehabilitation) may not be used in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(i) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR parts 59 through 79), or less than one year has passed since the FEMA notification regarding such hazards; and

(ii) Flood insurance protection is to be obtained as a condition of the approval of financial assistance to the property owner.

(2) Where a recipient provides financial assistance for acquisition or construction purposes (including rehabilitation) for property located in an area identified by FEMA as having special flood hazards, the responsible entity is responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.

(3) Paragraph (a) of this section does not apply to Federal formula grants made to a State.

(b) Pursuant to the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3501), HUD assistance may not be used for most activities proposed in the Coastal Barrier Resources System.

(c) In all cases involving HUD assistance, subsidy, or insurance for the purchase or sale of an existing property in a Runway Clear Zone or Clear Zone, as defined in 24 CFR part 51, the responsible entity shall advise the buyer that the property is in a runway clear zone or clear zone, what the implications of such a location are, and that there is a possibility that the property may, at a later date, be acquired by the airport operator. The buyer must sign a statement acknowledging receipt of this information.

§§ 58.7-58.9 [Reserved]

Subpart B—General Policy: Responsibilities of Responsible Entities

§ 58.10 Basic environmental responsibility.

In accordance with the provisions of law cited in § 58.1(b), the responsible entity must assume the environmental responsibilities for projects under programs cited in § 58.1(b), and in doing so must comply with the provisions of NEPA and the CEQ regulations contained in 40 CFR parts 1500 through 1508, including the procedures set forth in this part. This includes responsibility for compliance with the applicable provisions and requirements of the Federal laws and authorities specified in § 58.5. The provisions of the CEQ regulations in 40 CFR parts 1500 through 1508 are incorporated by reference into this part.

§ 58.11 Legal capacity and performance.

(a) A responsible entity which believes that it does not have the legal capacity to carry out the environmental responsibilities required by this part should contact the appropriate local HUD Office or the State for further instructions. Determinations of legal capacity will be made on a case-by-case basis.

(b) If a public housing, Indian housing, or special project recipient objects to the non-recipient responsible entity conducting the environmental review on the basis of performance, timing, or compatibility of objectives, HUD will review the facts to determine

who will perform the environmental review.

(c) At any time, HUD may reject the use of a responsible entity to conduct the environmental review in a particular case on the basis of performance, timing or compatibility of objectives, or in accordance with § 58.77(d)(1).

(d) If a responsible entity, other than a recipient, objects to performing an environmental review, or if HUD determines that the responsible entity should not perform the environmental review, HUD may designate another responsible entity to conduct the review in accordance with this part or may itself conduct the environmental review in accordance with the provisions of 24 CFR part 50.

§ 58.12 Technical and administrative capacity.

The responsible entity must develop the technical and administrative capability necessary to comply with 40 CFR parts 1500 through 1508 and the procedures of this part.

§ 58.13 Responsibilities of the certifying officer.

Under the terms of the certification required by § 58.71, a responsible entity's certifying officer is the "responsible Federal official" as that term is used in section 102 of NEPA and in statutory provisions cited in § 58.1(b). The Certifying Officer is therefore responsible for all the requirements of section 102 of NEPA and the related provisions in 40 CFR parts 1500 through 1508, and 24 CFR part 58, including the related Federal authorities listed in § 58.5 of this part. The Certifying Officer must also:

(a) Represent the responsible entity and be subject to the jurisdiction of the Federal courts. The Certifying Officer will not be represented by the Department of Justice in court; and

(b) Ensure that the responsible entity reviews and comments on all EISs prepared for Federal projects that may have an impact on the recipient's program.

§ 58.14 Interaction with State, Federal and non-Federal entities.

A responsible entity shall consult, as appropriate, environmental agencies, State, Federal and non-Federal entities and the public in the preparation of an EIS, EA or other environmental reviews undertaken under the related laws and authorities cited in § 58.5 and § 58.6. The responsible entity must also cooperate with other agencies to reduce duplication between NEPA and comparable environmental review requirements of the State (see 40 CFR 1506.2 (b) and (c)). The responsible

entity must prepare its EAs and EISs so that they comply with the environmental review requirements of both Federal and State laws unless otherwise specified or provided by law. State, Federal and local agencies may participate or act in a joint lead or cooperating agency capacity in the preparation of joint EISs (see 40 CFR 1501.5(b) and 1501.6). A single EIS may be prepared and adopted by multiple users to the extent that the review addresses the relevant environmental issues and there is a written agreement between the cooperating agencies which sets forth the coordinated and overall responsibilities.

§ 58.15 Tiering.

Responsible entities may tier their environmental reviews and assessments to eliminate repetitive discussions of the same issues at subsequent levels of review. Tiering is appropriate when there is a requirement to evaluate a policy or proposal in the early stages of development or when site-specific analysis or mitigation is not currently feasible and a more narrow or focused analysis is better at a later date. The site specific review need only reference or summarize the issues addressed in the broader review. The broader review should identify and evaluate those issues ripe for decision and exclude those issues not relevant to the policy, program or project under consideration. The broader review should also establish the policy, standard or process to be followed in the site specific review. The Finding of No Significant Impact (FONSI) with respect to the broader assessment shall include a summary of the assessment and identify the significant issues to be considered in site specific reviews. Subsequent site-specific reviews will not require notices or a Request for Release of Funds unless the Certifying Officer determines that there are unanticipated impacts or impacts not adequately addressed in the prior review. A tiering approach can be used for meeting environmental review requirements in areas designated for special focus in local Consolidated Plans. Local and State Governments are encouraged to use the Consolidated Plan process to facilitate environmental reviews.

§ 58.16 [Reserved].

§ 58.17 Historic Preservation requirements for prior Section 17 grants.

A recipient of a section 17 grant shall comply with the historic preservation requirements of this part and existing grant agreements.

§ 58.18 Responsibilities of States Assuming HUD Responsibilities.

(a) States that elect to administer a HUD program shall ensure that the program complies with the provisions of this part. The State must:

(1) Designate the State agency or agencies which will be responsible for carrying out the requirements and administrative responsibilities set forth in subpart H and which will:

(i) Develop a monitoring and enforcement program for post-review actions on environmental reviews and monitor compliance with any environmental conditions included in the award.

(ii) Receive public notices, RROFs and certifications from recipients pursuant to §§ 58.70 and 58.71; accept objections from the public and from other agencies (§ 58.73); and perform other related responsibilities regarding releases of funds.

(2) Fulfill the State role in Subpart H relative to the time period set for the receipt and disposition of comments, objections and appeals (if any) on particular projects.

(b) States administering section 17 Programs shall assume the responsibilities set forth in this section for overseeing the State recipient's performance and compliance with NEPA and related Federal authorities as set forth in this part, including receiving RROFs and environmental certifications for particular projects from State recipients and objections from government agencies and the public in accordance with the procedures contained in subpart H of this part. The State shall forward to the responsible HUD Field Office the environmental certification, the RROF and any objections received, and shall recommend whether to approve or disapprove the certification and RROF.

§§ 58.19–58.20 [Reserved].

Subpart C—General Policy: Environmental Review Procedures

§ 58.21 Time periods.

All time periods in this part shall be counted in calendar days. The first day of a time period begins at 12:01 a.m. local time on the day following the publication date of the notice which initiates the time period.

§ 58.22 Limitations on activities pending clearance.

(a) A recipient may not commit HUD assistance funds under a program listed in § 58.1(b) on an activity or project until HUD or the State has approved the recipient's RROF and the related certification of the responsible entity. In

addition, until the RROF and related certification has been approved, the recipient may not commit local (non-HUD) funds on an activity or project under a program listed in § 58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives. If an activity is exempt under § 58.34, or not subject to § 58.5 under § 58.35(b), no RROF is required and a recipient may undertake the activity immediately after the award of the assistance.

(b) An option agreement on a proposed site or property is allowable prior to the completion of the environmental review if the option agreement is subject to a determination by the recipient on the desirability of the property for the project as a result of the completion of the environmental review in accordance with 24 CFR part 58 and its cost is fully refundable. There is no constraint on the purchase of an option by third parties that have not been selected for HUD funding, have no responsibility for the environmental review and have no say in the approval or disapproval of the project.

(c) *Relocation Costs.* Relocation costs may be incurred before the approval of the RROF and related certification for the project provided that they are required by 24 CFR part 42.

§ 58.23 Financial assistance for environmental review.

The costs of environmental reviews, including costs incurred in complying with any of the related laws and authorities cited in § 58.5 and § 58.6, are eligible project costs to the extent allowable under the HUD assistance program regulations.

§§ 58.24–58.29 [Reserved]

Subpart D—Environmental Review Process: Documentation, Range of Activities, Project Aggregation and Classification

§ 58.30 Environmental Review Process.

The environmental review process consists of all the actions that a responsible entity must take to determine compliance with NEPA and related provisions of law and this part. The environmental review process includes all the compliance actions needed for other activities and projects that are not assisted by HUD but are aggregated by the responsible entity in accordance with § 58.32.

§ 58.31 [Reserved]

§ 58.32 Project aggregation.

(a) A responsible entity must group together and evaluate as a single project

all individual activities which are related either on a geographical or functional basis, or are logical parts of a composite of contemplated actions.

(b) In deciding the most appropriate basis for aggregation when evaluating activities under more than one program, the responsible entity may choose: *Functional aggregation* when a specific type of activity (e.g., water improvements) is to take place in several separate locales or jurisdictions; *geographic aggregation* when a mix of dissimilar but related activities is to be concentrated in a fairly specific project area (e.g., a combination of water, sewer and street improvements and economic development activities); or a *combination of aggregation approaches*, which, for various project locations, considers the impacts arising from each functional activity and its interrelationship with other activities.

(c) The purpose of project aggregation is to group together related activities so that the responsible entity can:

(1) Address adequately and analyze, in a single environmental review, the separate and combined impacts of activities that are similar, connected and closely related, or that are dependent upon other activities and actions. (See 40 CFR 1508.25(a)).

(2) Consider reasonable alternative courses of action.

(3) Schedule the activities to resolve conflicts or mitigate the individual, combined and/or cumulative effects.

(4) Prescribe mitigation measures and safeguards including project alternatives and modifications to individual activities.

(d) *Multi-year project aggregation.*

(1) *Release of funds.* When a recipient's planning and program development provide for activities to be implemented over two or more years, the responsible entity's environmental review should consider the relationship among all component activities of the multi-year project regardless of the source of funds and address and evaluate their cumulative environmental effects. The full schedule of all the aggregated activities and the estimated cost of the total project must be listed and described by the responsible entity in the environmental review and included in the RROF. The release of funds will cover the entire project period.

(2) When one or more of the conditions described in § 58.47 exists, the recipient or other responsible entity must re-evaluate the environmental review.

§ 58.33 Emergencies.

(a) In the cases of emergency, disaster or imminent threat to health and safety which warrant the taking of an action with significant environmental impact, the provisions of 40 CFR 1506.11 shall apply.

(b) If funds are needed on an emergency basis and when adherence to separate comment periods would prevent the giving of assistance, the combined Notice of FONSI and the Notice of the Intent to Request Release of Funds may be disseminated and/or published simultaneously with the submission of the Request for Release of Funds (RROF). The combined Notice of FONSI and NOI/ROF shall state that the funds are needed on an immediate emergency basis due to a Presidentially declared disaster and that the comment periods have been combined. The Notice shall also invite commenters to submit their comments to both HUD and the responsible entity issuing the notice to assure that these comments will receive full consideration.

§ 58.34 Exempt activities.

(a) A responsible entity does not have to comply with the environmental requirements of this part or undertake any environmental review, consultation or other action under NEPA and the other provisions of law or authorities cited in § 58.5 for the activities exempt by this section or projects consisting solely of the following exempt activities:

- (1) Environmental and other studies, resource identification and the development of plans and strategies;
- (2) Information and financial services;
- (3) Administrative and management activities;
- (4) Public services that will not have a physical impact or result in any physical changes, including but not limited to services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs;
- (5) Inspections and testing of properties for hazards or defects;
- (6) Purchase of insurance;
- (7) Purchase of tools;
- (8) Engineering or design costs;
- (9) Technical assistance and training;
- (10) Assistance for any temporary improvements or for permanent improvements that do not alter environmental conditions and are limited to protection, repair or restoration activities necessary only to control or arrest the effects from disasters, imminent threats or physical deterioration;

(11) Any of the categorical exclusions listed in § 58.35(a) provided that there

are no circumstances which require compliance with any other Federal laws and authorities cited in § 58.5.

(b) A recipient does not have to submit an RROF and certification, and no further approval from HUD or the State will be needed by the recipient for the drawdown of funds to carry out exempt activities and projects. However, the responsible entity must document in writing its determination that each activity or project is exempt and meets the conditions specified for such exemption under this section.

§ 58.35 Categorical exclusions.

Categorical exclusion refers to a category of activities for which no environmental impact statement or environmental assessment and finding of no significant impact under NEPA is required, except in extraordinary circumstances (see § 58.2(a)(3)) in which a normally excluded activity may have a significant impact. Compliance with the other applicable Federal environmental laws and authorities listed in § 58.5 is required for any categorical exclusion listed in paragraph (a) of this section.

(a) *Categorical exclusions subject to § 58.5.* The following activities are categorically excluded under NEPA, but may be subject to review under authorities listed in § 58.5:

(1) Acquisition, repair, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size or capacity of more than 20 percent (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).

(2) Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons.

(3) Rehabilitation of buildings and improvements when the following conditions are met:

(i) In the case of multifamily residential buildings:

(A) Unit density is not changed more than 20 percent;

(B) The project does not involve changes in land use (from residential to non-residential); and

(C) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.

(ii) In the case of non-residential structures, including commercial, industrial, and public buildings:

(A) The facilities and improvements are in place and will not be changed in

size or capacity by more than 20 percent; and

(B) The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.

(4) An individual action on a one - to four-family dwelling or an individual action on a project of five or more units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four units on any one site.

(5) Acquisition or disposition of an existing structure or acquisition of vacant land provided that the structure or land acquired or disposed of will be retained for the same use.

(b) *Categorical exclusions not subject to § 58.5.* The Department has determined that the following categorically excluded activities would not alter any conditions that would require a review or compliance determination under the Federal laws and authorities cited in § 58.5. When the following kinds of activities are undertaken, the responsible entity does not have to publish a NOI/RROF or execute a certification and the recipient does not have to submit a RROF to HUD (or the State) except in the circumstances described in paragraph (c) of this section. Following the award of the assistance, no further approval from HUD or the State will be needed with respect to environmental requirements, except where paragraph (c) of this section applies. The recipient remains responsible for carrying out any applicable requirements under § 58.6.

(1) Tenant-based rental assistance;

(2) Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services;

(3) Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs;

(4) Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations;

(5) Activities to assist homeownership of existing dwelling units, including closing costs and down payment assistance to home buyers, interest buydowns and similar activities that result in the transfer of title to a property;

(6) Affordable housing pre-development costs including legal, consulting, developer and other costs related to obtaining site control, project financing, loan commitments, zoning approvals, and other related activities which do not have a physical impact.

(c) *Circumstances requiring NEPA review.* If a responsible entity determines that an activity or project identified in paragraph (a) or (b) of this section, because of extraordinary circumstances and conditions at or affecting the location of the activity or project, may have a significant environmental effect, it shall comply with all the requirements of this part.

(d) The Environmental Review Record (ERR) must contain a well organized written record of the process and determinations made under this section.

§ 58.36 Environmental assessments.

If a project is not exempt or categorically excluded under §§ 58.34 and 58.35, the responsible entity must prepare an EA in accordance with subpart E of this part. If it is evident without preparing an EA that an EIS is required under § 58.37, the responsible entity should proceed directly to an EIS.

§ 58.37 Environmental impact statement determinations.

(a) An EIS is required when the project is determined to have a potentially significant impact on the human environment.

(b) An EIS is required under any of the following circumstances, except as provided in paragraph (c) of this section:

(1) The project would provide a site or sites for, or result in the construction of, hospitals or nursing homes containing a total of 2,500 or more beds.

(2) The project would remove, demolish, convert or substantially rehabilitate 2,500 or more existing housing units (but not including rehabilitation projects categorically excluded under § 58.35), or would result in the construction or installation of 2,500 or more housing units, or would provide sites for 2,500 or more housing units.

(3) The project would provide enough additional water and sewer capacity to support 2,500 or more additional housing units. The project does not have to be specifically intended for residential use nor does it have to be totally new construction. If the project is designed to provide upgraded service to existing development as well as to serve new development, only that portion of the increased capacity which is intended to serve new development should be counted.

(c) If, on the basis of an EA, a responsible entity determines that the thresholds in paragraph (b) of this section are the sole reason for the EIS, the responsible entity may prepare a FONSI pursuant to 40 CFR 1501.4. In such cases, the FONSI must be made available for public review for at least 30 days before the responsible entity makes the final determination whether to prepare an EIS.

(d) Notwithstanding paragraphs (a) through (c) of this section, an EIS is not required where § 58.53 is applicable.

(e) *Recommended EIS Format.* The responsible entity must use the EIS format recommended by the CEQ regulations (40 CFR 1502.10) unless a determination is made on a particular project that there is a compelling reason to do otherwise. In such a case, the EIS format must meet the minimum requirements prescribed in 40 CFR 1502.10.

§ 58.38 Environmental review record.

The responsible entity must maintain a written record of the environmental review undertaken under this part for each project. This document will be designated the "Environmental Review Record" (ERR), and shall be available for public review. The responsible entity must use the current HUD-recommended formats or develop equivalent formats.

(a) *ERR Documents.* The ERR shall contain all the environmental review documents, public notices and written determinations or environmental findings required by this part as evidence of review, decisionmaking and actions pertaining to a particular project of a recipient. The document shall:

- (1) Describe the project and the activities that the recipient has determined to be part of the project;
- (2) Evaluate the effects of the project or the activities on the human environment;
- (3) Document compliance with applicable statutes and authorities, in particular those cited in § 58.5 and 58.6; and

(4) Record the written determinations and other review findings required by this part (e.g., exempt and categorically excluded projects determinations, findings of no significant impact).

(b) *Other documents and information.* The ERR shall also contain verifiable source documents and relevant base data used or cited in EAs, EISs or other project review documents. These documents may be incorporated by reference into the ERR provided that each source document is identified and available for inspection by interested parties. Proprietary material and special

studies prepared for the recipient that are not otherwise generally available for public review shall not be incorporated by reference but shall be included in the ERR.

§ 58.39 [Reserved].

Subpart E—Environmental Review Process: Environmental Assessments (EA's)

§ 58.40 Preparing the environmental assessment.

The responsible entity may prepare the EA using the HUD recommended format. In preparing an EA for a particular project, the responsible entity must:

(a) Determine existing conditions and describe the character, features and resources of the project area and its surroundings; identify the trends that are likely to continue in the absence of the project.

(b) Identify all potential environmental impacts, whether beneficial or adverse, and the conditions that would change as a result of the project.

(c) Identify, analyze and evaluate all impacts to determine the significance of their effects on the human environment and whether the project will require further compliance under related laws and authorities cited in § 58.5 and § 58.6.

(d) Examine and recommend feasible ways in which the project or external factors relating to the project could be modified in order to eliminate or minimize adverse environmental impacts.

(e) Examine alternatives to the project itself, if appropriate, including the alternative of no action.

(f) Complete all environmental review requirements necessary for the project's compliance with applicable authorities cited in §§ 58.5 and 58.6.

(g) Based on steps set forth in paragraph (a) through (f) of this section, make one of the following findings:

(1) A Finding of No Significant Impact (FONSI), in which the responsible entity determines that the project is not an action that will result in a significant impact on the quality of the human environment. The responsible entity may then proceed to § 58.43.

(2) A finding of significant impact, in which the project is deemed to be an action which may significantly affect the quality of the human environment. The responsible entity must then proceed with its environmental review under subparts F or G of this part.

§ 58.41–58.42 [Reserved].

§ 58.43 Dissemination and/or publication of the findings of no significant impact.

(a) If the responsible entity makes a finding of no significant impact, it must prepare a FONSI notice, using the current HUD-recommended format or an equivalent format. As a minimum, the responsible entity must send the FONSI notice to individuals and groups known to be interested in the activities, to the local news media, to appropriate tribal, local, State and Federal agencies; to the Regional Offices of the Environmental Protection Agency having jurisdiction and to the HUD Field Offices. The responsible entity may also publish the FONSI notice in a newspaper of general circulation in the affected community. If the notice is not published, it must also be prominently displayed in public buildings, such as the local Post Office and within the project area or in accordance with procedures established as part of the affected community's citizen participation process.

(b) The responsible entity may disseminate or publish a FONSI notice at the same time it disseminates or publishes the NOI/RROF required by § 58.70. If the notices are released as a combined notice, the combined notice shall:

(1) Clearly indicate that it is intended to meet two separate procedural requirements; and

(2) Advise the public to specify in their comments which "notice" their comments address.

(c) The responsible entity must consider the comments and make modifications, if appropriate, in response to the comments, before it completes its environmental certification and before the recipient submits its RROF. In Presidentially declared disaster areas, modifications resulting from public comment, if appropriate, must be made before proceeding with the expenditure of funds.

§ 58.44 [Reserved].

§ 58.45 Public comment periods.

(a) Notice of finding of no significant impact: 15 days from date of publication or if no publication, 18 days from the date of mailing and posting.

(b) Notice of intent to request release of funds: 7 days from date of publication or if no publication, 10 days from date of mailing and posting.

(c) Concurrent or Combined notices: Same as FONSI notice.

§ 58.46 Time delays for exceptional circumstances.

The responsible entity must make the FONSI available for public comments for 30 days before the recipient files the RROF when:

- (a) There is a considerable interest or controversy concerning the project;
- (b) The proposed project is similar to other projects that normally require the preparation of an EIS; or
- (c) The project is unique and without precedent.

§ 58.47 Re-evaluation of assessment findings.

(a) A responsible entity must re-evaluate the EA findings when:

(1) The recipient proposes substantial changes in the nature, magnitude or extent of the project, including adding new activities not anticipated in the original scope of the project and its cost estimate;

(2) There are new circumstances and environmental conditions which may affect the project or have a bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity which is proposed to be continued; or

(3) The recipient proposes the selection of an alternative not considered in the original EA.

(b) The purpose of the responsible entity's re-evaluation of the EA is to determine if the FONSI is still valid. If the FONSI is still valid but the data or conditions upon which it was based have changed, the responsible entity must amend the original assessment and update its ERR by including this re-evaluation and its determination based on its findings. If the responsible entity determines that the FONSI is no longer valid, it must prepare an EA or an EIS if its evaluation indicates potentially significant impacts. Where the recipient is not the responsible entity, the recipient must inform the responsible entity promptly of any proposed substantial changes under paragraph (a)(1) of this section, new circumstances or environmental conditions under paragraph (a)(2) of this section, or any proposals to select a different alternative under paragraph (a)(3) of this section, and must then permit the responsible entity to re-evaluate the EA before proceeding.

§§ 58.48–58.51 [Reserved].**Subpart F—Environmental Review Process: Environmental Impact Statement Determinations****§ 58.52 Adoption of other agencies' EISs.**

The responsible entity may adopt a draft or final EIS prepared by another agency provided that the EIS was prepared in accordance with 40 CFR parts 1500 through 1508. If the responsible entity adopts an EIS prepared by another agency, the procedure in 40 CFR 1506.3 shall be followed. An adopted EIS may have to be revised and modified to adapt it to the particular environmental conditions and circumstances of the project if these are different from the project reviewed in the EIS. In such cases the responsible entity must prepare, circulate, and file a supplemental draft EIS in the manner prescribed in § 58.64 and otherwise comply with the clearance and time requirements of the EIS process, except that scoping requirements under 40 CFR 1501.7 shall not apply. The agency that prepared the original EIS should be informed that the responsible entity intends to amend and adopt the EIS. The responsible entity may adopt an EIS when it acts as a cooperating agency in its preparation under 40 CFR 1506.3. The responsible entity is not required to re-circulate or file the EIS, but must complete the clearance process for the RROF. The decision to adopt an EIS shall be made a part of the project ERR.

§ 58.53 Use of prior environmental impact statements.

Where any final EIS has been listed in the Federal Register for a project pursuant to this part, or where an areawide or similar broad scale final EIS has been issued and the EIS anticipated a subsequent project requiring an environmental clearance, then no new EIS is required for the subsequent project if all the following conditions are met:

(a) The ERR contains a decision based on a finding pursuant to § 58.40 that the proposed project is not a new major Federal action significantly affecting the quality of the human environment. The decision shall include:

- (1) References to the prior EIS and its evaluation of the environmental factors affecting the proposed subsequent action subject to NEPA;
- (2) An evaluation of any environmental factors which may not have been previously assessed, or which may have significantly changed;
- (3) An analysis showing that the proposed project is consistent with the location, use, and density assumptions

for the site and with the timing and capacity of the circulation, utility, and other supporting infrastructure assumptions in the prior EIS;

(4) Documentation showing that where the previous EIS called for mitigating measures or other corrective action, these are completed to the extent reasonable given the current state of development.

(b) The prior final EIS has been filed within five (5) years, and updated as follows:

(1) The EIS has been updated to reflect any significant revisions made to the assumptions under which the original EIS was prepared;

(2) The EIS has been updated to reflect new environmental issues and data or legislation and implementing regulations which may have significant environmental impact on the project area covered by the prior EIS.

(c) There is no litigation pending in connection with the prior EIS, and no final judicial finding of inadequacy of the prior EIS has been made.

§ 58.54 [Reserved]**Subpart G—Environmental Review Process: Procedures for Draft, Final and Supplemental Environmental Impact Statements****§ 58.55 Notice of intent to prepare an EIS.**

As soon as practicable after the responsible entity decides to prepare an EIS, it must publish a NOI/EIS, using the HUD recommended format and disseminate it in the same manner as required by 40 CFR parts 1500 through 1508.

§ 58.56 Scoping process.

The determination on whether or not to hold a scoping meeting will depend on the same circumstances and factors as for the holding of public hearings under § 58.59. The responsible entity must wait at least 15 days after publishing the NOI/EIS before holding a scoping meeting.

§ 58.57 Lead agency designation.

If there are several agencies ready to assume the lead role, the responsible entity must make its decision based on the criteria in 40 CFR 1501.5(c). If the responsible entity and a Federal agency are unable to reach agreement, then the responsible entity must notify HUD (or the State, where applicable). HUD (or the State) will assist in obtaining a determination based on the procedure set forth in 40 CFR 1501.5(e).

§ 58.58 [Reserved]**§ 58.59 Public hearings and meetings.**

(a) *Factors to consider.* In determining whether or not to hold public hearings in accordance with 40 CFR 1506.6, the responsible entity must consider the following factors:

(1) The magnitude of the project in terms of economic costs, the geographic area involved, and the uniqueness or size of commitment of resources involved.

(2) The degree of interest in or controversy concerning the project.

(3) The complexity of the issues and the likelihood that information will be presented at the hearing which will be of assistance to the responsible entity.

(4) The extent to which public involvement has been achieved through other means.

(b) *Procedure.* All public hearings must be preceded by a notice of public hearing, which must be published and disseminated in the same manner as the FONSI Notice (See § 58.43). The public hearing notice must be published at least 15 days before the hearing date. The Notice must:

(1) State the date, time, place, and purpose of the hearing or meeting.

(2) Describe the project, its estimated costs, and the project area.

(3) State that persons desiring to be heard on environmental issues will be afforded the opportunity to be heard.

(4) State the responsible entity's name and address and the name and address of its Certifying Officer.

(5) State what documents are available, where they can be obtained, and any charges that may apply.

§ 58.60 Preparation and filing of environmental impact statements.

(a) The responsible entity must prepare the draft environmental impact statement (DEIS) and the final environmental impact statements (FEIS) using the current HUD recommended format or its equivalent.

(b) The responsible entity must file and distribute the (DEIS) and the (FEIS) in the following manner:

(1) Five copies to EPA Headquarters;

(2) Five copies to EPA Regional Office;

(3) Copies made available in the responsible entity's and the recipient's office;

(4) Copies or summaries made available to persons who request them; and

(5) FEIS only—one copy to State, HUD Field Office, and HUD Headquarters library.

§§ 58.61–58.69 [Reserved]**Subpart H—Release of Funds for Particular Projects****§ 58.70 Notice of intent to request release of funds.**

The NOI/RROF must be disseminated and/or published in the manner prescribed by § 58.43 and § 58.45 before the certification is signed by the responsible entity.

§ 58.71 Request for release of funds and certification.

(a) The RROF and certification shall be sent to the appropriate HUD Field Office (or the State, if applicable), except as provided in paragraph (b) of this section. This request shall be executed by the Certifying Officer. The request shall describe the specific project and activities covered by the request and contain the certification required under the applicable statute cited in § 58.1(b). The RROF and certification must be in a form specified by HUD.

(b) When the responsible entity is conducting an environmental review on behalf of a recipient, as provided for in § 58.10, the recipient must provide the responsible entity with all available project and environmental information and refrain from undertaking any physical activities or choice limiting actions until HUD (or the State, if applicable), has approved its request for release of funds. The certification form executed by the responsible entity's certifying officer shall be sent to the recipient that is to receive the assistance along with a description of any special environmental conditions that must be adhered to in carrying out the project. The recipient is to submit the RROF and the certification of the responsible entity to HUD (or the State, if applicable) requesting the release of funds. The recipient must agree to abide by the special conditions, procedures and requirements of the environmental review, and to advise the responsible entity of any proposed change in the scope of the project or any change in environmental conditions.

(c) If the responsible entity determines that some of the activities are exempt under applicable provisions of this part, the responsible entity shall advise the recipient that it may incur costs on these activities as soon as programmatic authorization is received. This finding shall be documented in the ERR maintained by the responsible entity and in the recipient's project files.

§ 58.72 HUD or State Actions on RROFs and Certifications.

The actions which HUD (or a State) may take with respect to a recipient's environmental certification and RROF are as follows:

(a) In the absence of any receipt of objection to the contrary, except as provided in paragraph (b) of this section, HUD (or the State) will assume the validity of the certification and RROF and will approve these documents after expiration of the 15-day period prescribed by statute.

(b) HUD (or the State) may disapprove a certification and RROF if it has knowledge that the responsible entity has not complied with the items in § 58.75, or that the RROF and certification are inaccurate.

(c) In cases in which HUD has approved a certification and RROF but subsequently learns (e.g., through monitoring) that the recipient violated § 58.22 or the recipient or responsible entity otherwise failed to comply with a clearly applicable environmental authority, HUD shall impose appropriate remedies and sanctions in accord with the law and regulations for the program under which the violation was found.

§ 58.73 Objections to release of funds.

HUD (or the State) will not approve the RROF for any project before 15 calendar days have elapsed from the time of receipt of the RROF and the certification or from the time specified in the notice published pursuant to § 58.70, whichever is later. Any person or agency may object to a recipient's RROF and the related certification. However, the objections must meet the conditions and procedures set forth in this subpart H. HUD (or the State) can refuse the RROF and certification on any grounds set forth in § 58.75. All decisions by HUD (or the State) regarding the RROF and the certification shall be final.

§ 58.74 Time for objecting.

All objections must be received by HUD (or the State) within 15 days from the time HUD (or the State) receives the recipient's RROF and the related certification, or within the time period specified in the notice, whichever is later.

§ 58.75 Permissible bases for objections.

HUD (or the State), will consider objections claiming a responsible entity's noncompliance with this part based only on any of the following grounds:

(a) The certification was not in fact executed by the responsible entity's Certifying Officer.

(b) The responsible entity has failed to make one of the two findings pursuant to § 58.40 or to make the written determination required by §§ 58.35, 58.47 or 58.53 for the project, as applicable.

(c) The responsible entity has omitted one or more of the steps set forth at subpart E for the preparation, publication and completion of an EA.

(d) The responsible entity has omitted one or more of the steps set forth at subparts F and G of this part for the conduct, preparation, publication and completion of an EIS.

(e) The recipient has committed funds or incurred costs not authorized by this part before release of funds and approval of the environmental certification by HUD or the State.

(f) Another Federal agency acting pursuant to 40 CFR part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality.

§ 58.76 Procedure for objections.

A person or agency objecting to a responsible entity's RROF and certification shall submit objections in writing to HUD (or the State). The objections shall:

(a) Include the name, address and telephone number of the persons or agency submitting the objection, and be signed by the person or authorized official of an agency.

(b) Be dated when signed.

(c) Describe the basis for objection and the facts or legal authority supporting the objection.

(d) State when a copy of the objection was mailed or delivered to the responsible entity's Certifying Officer.

§ 58.77 Effect of approval of certification.

(a) *Responsibilities of HUD and States.* HUD's (or, where applicable, the State's) approval of the certification shall be deemed to satisfy the

responsibilities of the Secretary under NEPA and related provisions of law cited at § 58.5 insofar as those responsibilities relate to the release of funds as authorized by the applicable provisions of law cited in § 58.1(b).

(b) *Public and agency redress.* Persons and agencies seeking redress in relation to environmental reviews covered by an approved certification shall deal with the responsible entity and not with HUD. It shall be HUD's policy to refer all inquiries and complaints to the responsible entity and its Certifying Officer. Similarly, the State (where applicable) may direct persons and agencies seeking redress in relation to environmental reviews covered by an approved certification to deal with the responsible entity, and not the State, and may refer inquiries and complaints to the responsible entity and its Certifying Officer. Remedies for noncompliance are set forth in program regulations.

(c) *Implementation of environmental review decisions.* Projects of a recipient will require post-review monitoring and other inspection and enforcement actions by the recipient and the State or HUD (using procedures provided for in program regulations) to assure that decisions adopted through the environmental review process are carried out during project development and implementation.

(d) *Responsibility for monitoring and training.* (1) At least once every three years, HUD Field Office intends to conduct in-depth monitoring and exercise quality control (through training and consultation) over the environmental activities performed by responsible entities under this part. Limited monitoring of these environmental activities will be conducted during each program monitoring site visit. If through limited or in-depth monitoring of these

environmental activities or by other means, HUD becomes aware of any environmental deficiencies, HUD may take one or more of the following actions:

(i) In the case of problems found during limited monitoring, HUD may schedule in-depth monitoring at an earlier date or may schedule in-depth monitoring more frequently;

(ii) HUD may require attendance by staff of the responsible entity at HUD-sponsored or approved training, which will be provided periodically at various locations around the country;

(iii) HUD may refuse to accept the certifications of environmental compliance on subsequent grants;

(iv) HUD may suspend or terminate the responsible entity's assumption of the environmental review responsibility;

(v) HUD may initiate sanctions, corrective actions, or other remedies specified in program regulations or agreements or contracts with the recipient.

(2) HUD's responsibilities and action under paragraph (d)(1) of this section shall not be construed to limit or reduce any responsibility assumed by a responsible entity with respect to any particular release of funds under this part. Whether or not HUD takes action under paragraph (d)(1) of this section, the Certifying Officer remains the responsible Federal official under § 58.13 with respect to projects and activities for which the Certifying Officer has submitted a certification under this part.

§§ 58.78–58.79 [Reserved].

Dated: August 30, 1995.

Henry G. Cisneros,
Secretary.

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